

How government entities comply with both GRAMA and HIPAA: A Primer

All Utah governmental entities must comply with the Government Records and Management Act (GRAMA) in the retention and disclosure of records in their possession. (see definitions of "governmental entity" and "record" in Utah Code 63G-2-103). GRAMA clarifies that it "does not apply to a record containing protected health information as defined in 45 C.F.R., Part 164, Standards for Privacy of Individually Identifiable Health Information, if the record is: (1) controlled or maintained by a governmental entity; and (2) governed by 45 C.F.R., Parts 160 and 164, Standards for Privacy of Individually Identifiable Health Information." (63G-2-107)

Governmental entities that are a covered entity, a business associate, or a covered component of a hybrid entity under HIPAA, must comply with HIPAA in their disclosure of PHI, but will apply GRAMA to records that are not PHI.

When PHI is disclosed to a governmental entity that is not a covered entity, business associate, or covered component, the records lose HIPAA protections, however the governmental entity will classify and disclose the records in accordance with GRAMA. Please also note that under GRAMA, if a more specific statute regulates the disclosure of certain records, that statute governs.

Under GRAMA, the legislature recognized two constitutional rights:
"(a) the public's right of access to information concerning the conduct of the public's business; and (b) the right of privacy in relation to personal data gathered by governmental entities." (63G-2-102.)

Governmental entities are responsible to assign a classification to the records they prepare, own, receive, or retain. The classification then dictates the type of disclosure that is allowed. For example, medical records in the possession of a governmental entity are generally classified as "private" (see 63G-2-302) and can only be released to a narrow list of individuals or entities (see 63G-2-202), or pursuant to a court order or legislative subpoena. There is also a provision that allows a governmental entity to share records with other governmental entities under certain circumstances (see 63G-2-206). As previously noted, if a more specific statute regulates the disclosure of certain medical records, then that statute governs. (example: 62A-4a-406 mandates that medical records pertinent to a child abuse or neglect investigation shall be provided to certain entities).

GRAMA also provides an appeal process for the denial of records, as well as criminal penalties and disciplinary action for the illegal release of records.